

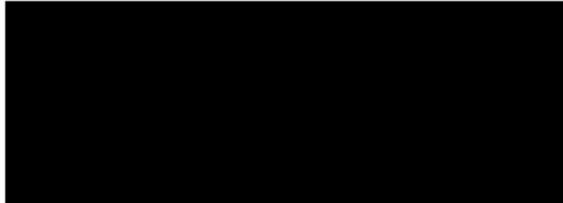
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



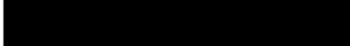
U.S. Citizenship  
and Immigration  
Services



89

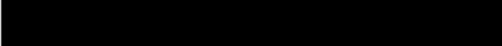
DATE: JUL 13 2012

Office: CALIFORNIA SERVICE CENTER

FILE: 

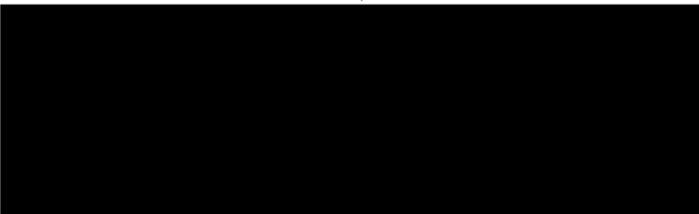
IN RE:

Petitioner: 

Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, a martial arts performing organization, filed this nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner seeks to employ the beneficiary as a martial artist for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary possesses culturally unique skills; and (2) that all of the beneficiary's performances or presentations would be culturally unique events.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the director intentionally ignored many facts presented by the petitioner and arbitrarily denied the petition. Counsel maintains that it is "well documented that Shaolin Kung Fu is culturally unique to China," and "has been an integral part of traditional Chinese culture for more than 1,500 years." Counsel contends that the evidence of record establishes the authenticity of the beneficiary's culturally unique skills and that all of his activities on behalf of the petitioner will be culturally unique. Counsel submits a brief and additional evidence in support of the appeal.

#### I. THE LAW

Section 101(a)(15)(P)(iii) of the Act provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

*Culturally unique* means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

- (A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or
- (B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and
- (C) Evidence that all of the performances or presentations will be culturally unique events.

Finally, the regulation at 8 C.F.R. § 214.2(p)(3) defines "arts" as follows:

*Arts* includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.



important consideration while learning the essence of a form. Strategy consideration reflects distinctive ancient Chinese philosophy.

With respect to the beneficiary, the petitioner submitted his diploma from the [REDACTED] [REDACTED] indicating that the beneficiary graduated after completing "the professional martial arts learning" at the school in 2005. The petitioner also submitted a certificate of award indicating that the beneficiary was granted "[REDACTED]

In response to the request for evidence, the petitioner submitted the following additional evidence related to the beneficiary's achievements in the martial arts:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

A. Culturally Unique Skills

The first issue to be addressed is whether the petitioner established that the beneficiary possesses culturally unique skills by submitting the evidence required under 8 C.F.R. § 214.2(p)(6)(ii). Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary's performance or art form is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work or other published materials. In the request for evidence ("RFE") issued on August 4, 2010, the director requested both forms of evidence, as well as evidence that the beneficiary is coming to the United States to participate in a cultural event or events that will further the understanding and development of his art form. The petitioner's evidence will be discussed below.

1. Affidavits, testimonials or letters from recognized experts

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill.

The petitioner initially submitted a letter from [REDACTED]

[REDACTED] He further states that, as a martial arts expert, he is "knowledgeable about the cultural underpinnings of Kung Fu and martial arts history in China," where Shaolin Kung Fu is the "most famous" martial arts style.

With respect to the beneficiary, [REDACTED] states:

It is my opinion that [the beneficiary], a martial artist from Shaolin, indeed has authentic skills in practicing, performing, presenting and teaching unique and traditional Shaolin Kungfu. My opinion is based on my knowledge of [the beneficiary's] achievements and qualifications, which are the two main measures of one's ability to practice, perform, present, and teach unique and traditional martial arts.

Based on my first-hand knowledge of [the beneficiary], I conclude that he has been practicing unique and traditional Shaolin Kungfu for a period of time. I am aware of the fact that he has been practicing Shaolin Kungfu for about 10 years. Based on his achievements in practicing and performing Shaolin Temple, [the beneficiary] was awarded all-around champion in a Wushu competition in 2005. He received his professional wushu training from a formal martial arts college. Based on these achievements and qualifications, I conclude that [the beneficiary] practices, performs and teaches unique and traditional Shaolin Kungfu.

Based on the foregoing, my conclusion is that [the beneficiary] has authentic talents and skills in unique and traditional Shaolin Kungfu.

[REDACTED] letter was accompanied by his biography from the online encyclopedia, *Wikipedia*.

In the RFE, the director instructed the petitioner to provide affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skill in performing or presenting the unique or traditional art form. In response, the petitioner submitted a letter from [REDACTED] [REDACTED] [REDACTED] letter are identical to the letter referenced above. He states:

It is my opinion that [the beneficiary], a martial artist directly from Shaolin, indeed has authentic skills in practicing, performing and teaching unique and traditional Shaolin Kungfu. My opinion is based on my knowledge of [the beneficiary's] achievements and qualifications, which are the two main measures of one's ability to practice, perform, present and teach unique and traditional martial arts.

[The beneficiary] has been practicing unique and traditional Kungfu for about 10 years. Based on his achievements in practicing and performing Shaolin Temple, [the beneficiary] was awarded First [REDACTED]

[REDACTED]. He performed as a master at the prestigious [REDACTED]. He was invited as a consultant for Shaolin's martial arts schools.

Based on these achievements and qualifications, I conclude that [the beneficiary] practices, performs and teaches unique and traditional Shaolin Kungfu.

The director found that the petitioner failed to provide requested evidence of the credentials of the experts providing letters and did not further discuss this evidence.

On appeal, counsel asserts that the petitioner did in fact provide evidence of [redacted] credentials in the form of the *Wikipedia* article. Counsel asserts that both letters were submitted by highly influential martial arts grand masters and submits evidence that both of these individuals have appeared on the cover of *Kung Fu Tai Chi Magazine*.

The submitted letters are generalized in terms of describing how Shaolin Kung Fu, and the beneficiary's specific skills in the discipline, qualify as a culturally unique art form. Neither of the submitted letters attests with any specificity to the unique cultural or traditional elements of the beneficiary's performance of Kung Fu. Furthermore, the petitioner submitted little documentary evidence specific to the beneficiary's achievements, training, skills or employment history. The petitioner has submitted the beneficiary's graduation diploma from a martial arts school, evidence that he achieved awards at two wushu competitions in China, and evidence that he has performed two demonstrations and judged one athletic event in the United States.

[redacted] indicate that the beneficiary is trained in Shaolin Kungfu, but they make no assertions regarding the cultural uniqueness of this style of Kung Fu, nor do they claim any particular expertise in this style of martial arts. Instead, they repeatedly refer to it as a "traditional" martial art. Simply claiming that a beneficiary practices a "traditional" form of Kung Fu is insufficient. The submitted letters do not explain the unique culture elements of the beneficiary's skills with any specificity. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990). As noted by the director, [redacted] did not substantiate how [redacted] qualifies as a culturally unique art form, or how it differs from other forms of Chinese martial arts that are practiced worldwide.

Further, the two letters submitted also provide inadequate information regarding the basis of the authors' knowledge of the beneficiary's skills. Both Grandmasters referred to their knowledge of the beneficiary's "achievements and qualifications" without explaining the basis for this knowledge, and also claimed "first-hand knowledge" without further clarification as to when or where they gained this knowledge. As noted above, the record contains little primary evidence of the beneficiary's individual achievements and qualifications.

Further, while both authors referred to "traditional" martial arts, they offered no further explanation regarding the cultural uniqueness of the beneficiary's skills. The AAO emphasizes that "traditional" skills must still comply with the definition of culturally unique at 8 C.F.R. § 214.2(p)(3), and merely stating that a beneficiary's skills are traditional does not qualify as meeting the definition.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the

alien's or group's skill." USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility.<sup>1</sup> The admissibility of and weight to be accorded expert testimony may vary depending on such factors as the extent of the expert's qualifications, the relevance of the testimony, the reliability of the testimony and the overall probative value to the specific facts at issue in the case. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011)(citing Fed. R. Evid. 702); *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Here, for the reasons discussed above, the expert opinion testimony is lacking in probative value, as the letters do not assist USCIS in determining whether the beneficiary in this matter engages in a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons. At issue is not whether the beneficiary is highly skilled in martial arts, but whether he is skilled in a culturally unique art form.

Finally, in comparing the two testimonial letters, there are entire paragraphs that are repeated almost verbatim. The near-verbatim repetition of entire paragraphs indicates that the language in each letter is not the author's own and further detracts from the probative value of the evidence. Overall, the letters fail to establish the manner in which the authors gained knowledge of the beneficiary's skill and fail to reference any culturally unique aspects of the beneficiary's Kung Fu performance.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill." As a matter of discretion, USCIS may accept expert opinion testimony. USCIS will, however, reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r. 1988).

---

<sup>1</sup> Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. *Black's Law Dictionary* 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); *see also id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

While the AAO acknowledges that Shaolin Kung Fu is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified Kung Fu practitioner trained in China is not sufficient to demonstrate his eligibility for this classification. The two letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A).

The director also reviewed the beneficiary's awards and certificates and determined that this evidence alone does not establish whether or how the beneficiary's skills are culturally unique. The AAO agrees with this assessment. The award and recognition certificates establish that the beneficiary has had some success as a competitive athlete at wushu competitions in China and has had the opportunity to use his skills as a judge and demonstrator at athletic events in the United States. Further, the evidence of record does not clearly corroborate the claim that the beneficiary "has been practicing Shaolin Kungfu for about ten years."

2. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner has submitted articles regarding Chinese martial arts from *Wikipedia* and other sources, as well as published information regarding the petitioning organization and the Shaolin temple in China. The regulation requires the petitioner to submit evidence that the *beneficiary's* performance is culturally unique, as evidenced by reviews in newspapers, journals or other published materials. The petitioner has not submitted any published materials that mention the beneficiary, and thus it has not submitted evidence that satisfies the plain language of this regulatory criterion.

On appeal, the petitioner submits the results of a Google search for the phrase "Chinese culture Shaolin Kung Fu." With respect to the Google search results, we emphasize that it is the petitioner's burden to submit published materials that meet this evidentiary criterion. USCIS is not obligated to conduct a search of the Internet for evidence that might meet the petitioner's evidentiary burden. Regardless, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires documentation that is specific to the individual beneficiary and his individual performance of the claimed culturally unique art form. Again, the petitioner did not submit any published materials pertaining to the beneficiary.

Counsel's broad assertion that "Shaolin Kung Fu . . . is culturally unique to China," cannot be accepted in lieu of actual documentation that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petition may not be approved as the petitioner has not submitted evidence to satisfy the evidentiary requirements at 8 C.F.R. §§ 214.2(p)(6)(ii)(A) or (B).

3. Evidence that all of the performances or presentations will be culturally unique events

The director determined that the beneficiary's proposed performances or presentations as a martial artist will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C). This finding was based on the petitioner's failure to provide a detailed explanation of each event on the proposed itinerary.

The petitioner provided evidence that it offers martial arts classes and regularly provides martial arts demonstrations. Assuming that the petitioner establishes through submission of the required evidence that the beneficiary's martial arts teachings and performances are culturally unique, the martial arts performances listed in the itinerary could be considered culturally unique events. As discussed above, however, the petitioner failed to establish that the beneficiary's performances are culturally unique by submitting evidence to meet the regulatory requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A) or 8 C.F.R. § 214.2(p)(6)(ii)(B).

Based on the petitioner's representations, the beneficiary will devote an undisclosed portion of his time to teaching martial arts to students at the petitioner's school rather than performing the claimed culturally unique skill of traditional Shaolin Kung Fu. The culturally unique aspects of the beneficiary's instruction and coaching responsibilities have not been discussed in the record. The petitioner cannot establish the beneficiary's eligibility as culturally unique artists or performers simply by claiming that they will be performing traditional Chinese martial arts and establishing that they were trained in the discipline in China. The petitioner must establish that the instant beneficiary's performances, and the specific artistic or entertainment events for which his services are sought, are in fact unique to a particular country, nation, society, class, ethnicity, religion, tribe or identifiable group of persons with a distinct culture. 8 C.F.R. § 214.2(p)(3). Vague references to the "Chinese Shaolin Kung Fu tradition" are insufficient to establish the beneficiary's eligibility. The petitioner has not established that the beneficiary will be performing as an artist or entertainer at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C). The petitioner's claims fail primarily on an evidentiary basis given the lack of documentary, testimonial or published evidence related specifically to the beneficiary.

### III. CONCLUSION

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that he enter the United States solely to perform, teach, or coach under a program that is culturally unique. Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that the beneficiary's form of artistic expression and all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. §§ 214.2(p)(3) and 214.2(p)(6)(ii). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.